

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERRI AVERY,

Defendant.

Case No. 18-20086

Honorable Laurie J. Michelson

Magistrate Judge

ORDER DENYING DEFENDANT'S RULE 29 MOTION

Gerri Avery was charged with one count of obstructing or impeding the due administration of the internal revenue laws. 26 U.S.C. § 7212(a). Her former employer, Integrated Healthcare Services Practice Management, LLC (IHCSM), stopped paying payroll taxes in the third quarter of 2013. Shortly after, the Internal Revenue Service began an investigation into the unpaid payroll taxes. As a result of her role in the operations of IHCSM Avery was deemed a responsible party for paying the payroll taxes and assessed a trust fund recovery penalty. And because the IRS believed Avery lied during its investigation, Avery was charged with obstruction.

Avery went to trial. At the conclusion of the government's case, Avery moved for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29(a). The Court heard oral argument on the motion. Avery contended the government presented insufficient evidence to show Avery took an act that obstructed or impeded the IRS investigation. In response, the government pointed to a voicemail Avery left for an IRS revenue officer along with a letter Avery sent, through counsel, to the IRS. And they pointed to exhibits and trial testimony to support their argument that each communication contained misrepresentations of fact designed to conceal Avery's real role in the company and protect her boss.

The Court reserved decision on the motion. *See* Fed. R. Crim. P. 29(b). Avery did not present any evidence and the case was submitted to the jury. The jury returned a guilty verdict. After the verdict, the Court decided the motion. *See* Fed. R. Crim. P. 29(c)(2). For the reasons more fully stated on the record, the Court denies Avery's motion for judgment of acquittal.

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Date: August 6, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, August 6, 2019, using the Electronic Court Filing system.

s/William Barkholz
Case Manager